

Application No.: 10/735,030
Examiner: Lang, Amy T.

Attorney Docket No.: USGINZ02516

REMARKS

Claims 26-30, 32-35, and 39-44 were pending in the application. By this amendment, claim 26 has been amended to incorporate subject matter from claim 39, claim 30 has been amended to correct an informality, claim 39 has been cancelled, and new claims 45 through 49 have been added. Accordingly, claims 26-30, 32-35, and 40-49 are now pending.

The following remarks are in response to the rejections of claims and other matters set forth in the Office Action.

I. Claim Objection

Claim 30 was objected to due to an informality. The claim has been amended in the manner suggested by the Examiner. Accordingly, Applicants request withdrawal of this objection.

II. Claims Rejected For Double Patenting

Claims 26 and 41-44 were provisionally rejected for double patenting. Applicants believe that the provisional rejection is rendered moot by the present amendment to claim 26. Accordingly, Applicants request withdrawal of the rejection.

III. Claims Rejected Under 35 U.S.C. § 103

Claims 26-30, 32-35, and 39-44 were rejected under 35 U.S.C. § 103 as being unpatentable over Laufer (US 2004/0194790) in view of Jaffie (US 2002/0161281). Without acceding to any of the Examiner's stated grounds for rejecting the claims, Applicants respond as follows.

Claim 26 has been amended to recite an apparatus having, inter alia, an overtube, a first catheter, and an anchor delivery system adapted to deliver an anchor assembly and secure a tissue fold, the anchor delivery system having a flexible delivery catheter, "the flexible delivery catheter having a needle adapted to transition from a first position in which the needle is substantially completely retained within the bending section, to a second position in which the needle extends from a distal end of the bending section for transverse passage through the tissue fold." The recitation of an anchor delivery system

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having a needle having some of the features recited above was contained in claim 39, which is canceled by this Amendment. Specification support for the amendment is provided at, for example, paragraph 0086 and Figure 3E. The Examiner relied upon the description of the apparatus illustrated in Figure 6B of the Laufer publication to reject claim 39. The Laufer publication, however, does not disclose, teach, or suggest an apparatus that includes a flexible delivery catheter having a bending section and a "needle adapted to transition from a first position ... to a second position," as recited. Instead, the Laufer device includes a pair of needles (818a, 818b) that are not retained at any time within the shaft (710). In addition, the needles (818a, 818b) in the Laufer device do not move relative to the shaft (710); rather, they rely upon the clamping force of the jaws (720, 722) to pierce tissue. (See paragraph 0096, Figures 9D-E).

In addition, the Jaffe publication does not provide any teaching of the subject matter missing from the Laufer publication.

Accordingly, because the combination of Laufer and Jaffe does not disclose, teach, or suggest an apparatus that includes all of the limitations recited in claim 26, the claim is not unpatentable for obviousness. Applicant requests withdrawal of the rejection and allowance of the claim.

Claims 27-30, 32-35, and 39-44 each depend from claim 26, and should be allowed for the same reasons.

IV. New Claims

New claims 45 and 48 contain several of the features recited in claim 26, including the flexible delivery catheter having a bending section and a "needle adapted to transition from a first position ... to a second position." Accordingly, these claims are patentable for the same reasons set forth above.

Amendment and/or cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented, but rather as an attempt to expedite allowance and issuance of the currently pending claims. No new matter has been added.

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CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below:

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to Deposit Account No. 50-3973 referencing Attorney Docket No. USGINZ02513. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,


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